

REMARKS

The Examiner objected to the drawings as failing to comply with 37 CFR 1.84 (p)(4) because reference character 1 has been used to designate both a preferred embodiment of the holster in all figures and of the close-up view of the clip in FIGURES 1 and 2. The Examiner will note that corrected drawing sheets are included herein and entry of the corrected drawing sheets and deletion of the numeral "1" designating the close-up view of the clip in FIGURES 1 and 2 is requested. Reconsideration is respectfully solicited.

The Examiner further rejected claims 1, 2, 9, 10, 17 and 18 under 35 USC 102(b) as anticipated by the patent to Clarke U.S. 5,967,393. As suggested by the Examiner, Clarke illustrates a holster pocket, a grip receiver having a grip receiver face and a face inlay. The Examiner will note that applicant's independent claims 1, 9 and 17 have been amended to further define applicant's auxiliary case, which extends above the belt of the user and is mounted on the holster pocket and has a resilient case bottom that bends when the pistol is grasped by the user to facilitate quick and easy access to the pistol without the necessity of zippers or other closures. A close review of the Clarke patent reveals that this patent fails to teach or disclose any such auxiliary case having a resilient case bottom that bends as noted in applicant's amended independent claims 1, 9 and 17. MPEP, Sec.2131, pg.2100-67 defines anticipation as follows: "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference" Verdegaal Brothers vs. Union Oil Company of California 2 USPQ 2nd 1051, 1053 (Fed.Cir. 1987). It is respectfully submitted that applicant's independent claims 1, 9 and 17 now recite structure including an auxiliary case having a resilient, flexible or bendable case bottom, which structure is not detailed, taught or

described in the Clarke patent. Clarke shows a flexible top flap, but no auxiliary case or the equivalent. The Clarke top flap bends to access an internally located weapon, but only as a pair of zippers are unzipped responsive to the pressure applied to the element 12 located on the top flap 250 of his drawings. There is no teaching or suggestion of an auxiliary case having a resilient, flexible or bendable case bottom which bends to accommodate the user's hand, as recited in applicant's amended claims 1, 2, 9, 10 and 17-18. Accordingly, it is respectfully submitted that amended claims 1, 2, 9, 10, 17 and 18 are not anticipated by the Clarke patent in light of the amendments to independent claims 1, 9 and 17 and reconsideration and allowance of claims 1, 2, 9, 10, 17 and 18 is therefore respectfully solicited.

The Examiner further rejected claims 3, 4, 11, 12, 19 and 20 under 35 USC 103(a) as unpatentable over the patent to Clarke, taken in view of the patent to Tuber, U.S. 5, 312,029. The Tuber patent adds the belt clip to the Clarke disclosure as detailed above. MPEP Sec.2143, at page 2100-126, lays out the ground rules for an obviousness type rejection as follows: "To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Furthermore, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, not in applicant's disclosure. In *Re Vaeck*, 20 USPQ 2nd 1438 (Fed.Cir.1991)." It is respectfully submitted that there is no reasonable suggestion or motivation in either the Clarke or the Tuber patents for combining these patents to

teach or suggest applicant's auxiliary case having a resilient, flexible or bendable case bottom which provides a hinge area or line for bending of the auxiliary case and grip receiver away from the handle of the enclosed weapon and providing ready access for the user's hand. In fact, it is respectfully submitted that the Clarke patent is a teaching away from applicant's invention as defined in his amended claims 1-20, since Clarke teaches the use of zippers to close his device, which zippers are automatically opened responsive to pressure applied to an antenna device, item 12, noted in his drawings. Furthermore, no auxiliary case or case bottom is either taught, disclosed or suggested in the Clarke patent but rather, a flexible outer top flap, supported by zippers, that bends to facilitate hand access to the weapon located inside the case. The entire side of the flap is flexible, in order to accommodate the hand and allows the weapon to be retrieved, rather than the resilient, flexible or bendable bottom of an auxiliary case, as detailed in applicant's amended claims 1, 9 and 17. Accordingly, it is further respectfully submitted that one skilled in the art would have no reason to combine the Clarke and the Tuber patents to define applicant's device as amended in his independent claims 1, 9 and 17, since the structure, operation and utilization of the Clarke device is so much different from that now detailed in applicant's amended claims 3, 4, 11, 12, 19 and 20. Moreover, Tuber adds only the belt clip and no other structural details, to the Clarke patent. Applicant requires no zippers and has no top flap, relying rather on an auxiliary case which is attached to the lower portion or pocket of the device at a resilient case bottom that acts as a hinge to facilitate ready access to the hand when drawing the enclosed weapon. There is no need or requirement for zippers to maintain the top flap in place, as in the case of Clarke. In fact, Clarke must have zippers or closures of some type in order to maintain the top flap in place against the remainder of the holster; otherwise, the top

flap would simply flop downwardly and would not maintain its position to conceal a weapon. In contrast, applicant uses the auxiliary case and the resiliency of the case bottom to maintain concealment of the weapon without the requirement of the zippers or other closures. It is therefore respectfully submitted that one skilled in the art could scarcely glean from Clarke or Tuber, taken alone or in combination, applicant's auxiliary case and flexible, resilient and bendable case bottom for establishing the necessary weapon concealment and yet ready access of the hand to the weapon without the necessity of closures.

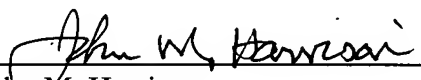
This observation leads to the second criteria for establishing a primary facia case of obviousness as noted in MPEP Sec. 2143, that the teaching or suggestion to make the claim combination and the reasonable expectation of success must be found in the prior art and not based on applicant's disclosure. It is respectfully submitted that there is no such motivation or suggestion of any combination desirability in order to make applicant's amended claims 3, 4, 11, 12, 19 and 20 obvious in either the Clarke or Tuber patents. Reconsideration and allowance of applicant's claims 3, 4, 11, 12, 19 and 20 as amended, is therefore respectfully solicited in light of the amendments to independent claims 1, 9 and 17, from which claims 3, 4, 11, 12, 19 and 20 depend, respectively.

The Examiner also rejected claims 5-8 and 13-16 under 35 USC 103(a) as unpatentable over Clarke, taken in view of the patent to Tuber and taken further in view of the patent to Distenfino, U.S. 5,829,502. The Distenfino et al patent, discloses an organizer handbag having flaps 18 to retain small items placed therein, at column 4, lines 51-54. However, a close review of the Distenfino et al patent reveals that the handbag is not designed to carry a weapon and has no relationship to Clarke or Tuber. The patent also does not teach or suggest an auxiliary case

and bendable, resilient or flexible case bottom as recited in applicant's claims 1 and 9, as amended. It is therefore respectfully solicited that one skilled in the art would not reasonably combine the Distenfano et al, handbag with the Clarke and Tuber disclosures to make obvious applicant's invention as embodied in his claims 5-8 and 13-16, which depend from amended independent claims 1 and 9. It is further respectfully submitted Distenfano et al adds nothing to applicant's disclosure in light of his amendments to independent amended claims 1 and 9 relating to the auxiliary case and resilient bendable or flexible case bottom that operates and acts as a hinge. Accordingly, it is respectfully submitted that claims 5-8 and 13-16 are not made obvious by the Tuber, Clarke and Distenfano et al patents, taken alone or in combination and reconsideration and allowance of claims 5-8 and 13-16 is respectfully solicited in light of the amendments to independent claims 1 and 9 from which these claims depend, respectfully.

Every effort has been made to amend applicant's claims 1, 9 and 17 in order to define his invention in the scope to which it is entitled. Accordingly, reconsideration and allowance of claims 1-20 in light of the amendments to independent claims 1, 9 and 17 is respectfully solicited.

Respectfully submitted,



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